IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 1242 of 1983
With
CRIMINAL REVISION APPLICATION No. 17 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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THE REGISTRAR OF COMPANIES & 1 - Applicant(s)
Versus
M/S SHASHI THEATRES PVT.LTD. & 4 - Respondent(s)

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Appearance :
MR DC SEJPAL, LD.CENTRAL GOVT. COUNSEL for Applicant(s) : 1 in both the Revision Applications.

MR PD BHATE, LD.APP for State in both the Revision Applications.
MS HETVI SANCHETI WITH MR.SV RAJU for Respondent(s) : 1, 3 in both the Revision Applications.
DELETED for Respondent(s) : 2,4 – 5.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 23/10/2007

COMMON CAV JUDGMENT

1. By way of both these Revision Applications, the petitioner has challenged the judgment and order dated 22nd September 1983 passed by the

learned Additional City Sessions Judge, Ahmedabad in Criminal Revision Application No.230 of 1983, reversing the order dated 18th July 1983 passed in Criminal Case No.1743 of 1982 by the learned Chief Metropolitan Magistrate, Ahmedabad, rejecting the application preferred by the accused citing the provisions of Section 468 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code').

2. Criminal Revision Application No.1242 of 1983 has been preferred by (i) Registrar of Companies and (ii) State of Gujarat, and the subsequent Revision Application i.e. Criminal Revision Application No.17 of 1984, has been preferred only by the Registrar of Companies and the State of Gujarat is joined as one of the respondents i.e. respondent no.6 in the said Revision Application. The original prosecution was against the respondent-accused persons whose names are shown as respondent nos.1 to 5 in both the Revision Applications. But ultimately, the said application came to be decided by the learned Magistrate on 18th

July 1983.

3. The respondent nos.1 to 5 challenged the said order dated 18th July 1983 by way of filing Criminal Revision Application No.230 of 1983 in the Court of learned City Sessions Judge at Ahmedabad. The order passed in the said Revision Application No.230 of 1983 is the order under challenge in these Revision Applications. Both these Revision Applications remained pending before this Court for several years and the record shows that respondent nos.2,4 and 5 have expired. Only the respondent no.1-orig.accused no.1 being a Private Limited Company and the respondent no.3-orig. accused no.3 being one of the directors, are facing both these proceedings. It appears that to avoid technicality, the second Revision Application i.e. Criminal Revision Application No.17 of 1984, has been preferred joining the State of Gujarat as party respondent no.6, but in sum and substance, the challenge in both the Revision Applications is the same.

4. The case of the prosecution is that one

complaint was filed against M/s.Shashi Theatres Pvt. Ltd. and its Directors in the Court of learned Chief Metropolitan Magistrate at Ahmedabad, for violation of Rule 10 of the Companies (Acceptance of Deposit) Rules, 1975 (hereinafter referred to as 'the Rules'). It is the case of the prosecution that the respondent no.1-Company and its Directors failed to submit their Return on or before 30th June 1981 and thereby, they have committed the offence punishable under Rule 11 of the said Rules.

5. The respondent-accused persons were called upon to face the charge but they preferred application contending that they cannot be prosecuted by virtue of Section 468 of the Code and the cognizance of the complaint was barred under the said provision. After hearing the learned Public Prosecutor and the advocate appearing for the respondent-accused persons, the learned Chief Metropolitan Magistrate turned down the contention of the respondents-accused and observed that the offence alleged against the respondents-accused was a

continuing offence and so even after 30th June 1981, the responsibility of the respondents-accused was to file Return under relevant Rules and this is a continuous obligation and, therefore, the offence also continued everyday even after that date of 30th June 1981. The learned Chief Metropolitan Magistrate held that the respondents-accused could not invoke the bar of cognizance under Section 468 of the Code and the said order was assailed by way of Criminal Revision Application No.230 of 1983 by the respondents-accused.

6. Shri D.C. Sejpal, learned Central Government Counsel appearing for the petitioner, has submitted that the learned Additional City Sessions Judge has grossly erred in saying that the complaint was barred by limitation being offence punishable with fine only and Section 468 could have been invoked by the petitioner. It is further submitted that the offence committed by the respondents-accused was a continuous offence and, therefore, the question of limitation contemplated in the Code by way of provision of Section 468 had no

room to play. He has taken me through the relevant Rules 10 and 11 of the Rules. It is submitted that the ratio of the decision in the case of ***State of Bihar v. Deokaran Nenshi and another, reported in 1972(2) SCC 890,*** would apply considering the scheme of Rules 10 and 11 of the Rules. It is submitted that the Rule 11 of the Rules ought to have been read by the learned Revisional Court in its true perspective. The Rule 11 which provides for penalty takes care where the contravention is continuing one and the penalty is also provided for such continuing offence i.e. a fine of Rs.50/- per day after the first during which the contravention continues. The learned Chief Metropolitan Magistrate was right in saying that the said complaint can proceed further and the learned Magistrate is entitled to take cognizance of the offence committed. The Apex Court in the case of Deokaran (supra) was dealing with a case of non-filing of the Return under the Income Tax Act and it is observed as under :

“5. A continuing offence is one

which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

7. The other say of Shri D.C. Sejpal, learned counsel appearing for the petitioner, is that this Court also may consider the ratio of the decision in the case of ***Bhagirath Kanoria and others v. State of M.P. and Bahadur Singh v. Provident Fund Inspector and others, reported in 1984 (4) SCC 222***; wherein the Apex Court has observed about the same that it would fall in the category of continuing offence. The Apex Court was dealing with a case where the prosecution was instituted under Employees' Provident Fund and Miscellaneous Provisions Act, 1952, where the employer had failed in paying the contribution to the Provident Fund within 15 days. The Apex Court has observed that the continuing offence is one which continues and a non-continuing offence is one which is committed once and for all. The question whether a particular offence is a continuing offence must necessarily depend upon the language of the Statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as

an offence. Referring to the scheme of Sections 472 and 473 of the Code, it is also observed that the delay in filing complaint against offence relating to non-compliance with the provisions of a welfare legislation is condonable 'in the interest of justice'. So at least according to Shri D.C. Sejpal, the prosecution ought not to have been turned down on the technicality of limitation and, therefore, the Revision Application should be allowed and the respondents-accused may be directed to face the proceedings initiated against them. Of course, three of them have died, so the present Revision Application as well as original criminal proceedings would stand abated qua them, but at least the respondent no.1-Company and the respondent no.3- surviving Director, may be directed to face the prosecution.

8. There is strong resistance from the otherside. Ms.Hetvi Sancheti, appearing on behalf of Shri S.V. Raju, learned counsel appearing for the respondents-accused, has submitted that learned Additional City Sessions Judge,

Ahmedabad, has taken care of the entire scheme of Rules 10 and 11 of the Rules referred to by the learned Chief Metropolitan Magistrate. Undisputedly, the offence punishable under Rule 11 is only with fine extending upto Rs.500/- and, therefore, under Section 468 of the Code, the complaint for the offence punishable under Rule 11 of the Rules arising from the contravention of Rule 10 of the Rules should have been filed within six months from the date of the offence i.e. from 30th June 1981 and the same has been filed in May 1982. So the learned Chief Metropolitan Magistrate could not take cognizance of the offence.

9. To appreciate the rival contentions placed before the Court and mainly the judgment cited by Ms.Hetvi Sancheti, learned counsel appearing for the respondents-accused, it would be beneficial to reproduce the relevant Rules 10 and 11 of the Rules, which are as under :

> *"**Rule 10** : Return of deposits to be filed with the Registrar :(1) Every company to which these rules apply,*

shall on or before the 30th day of June, or every year, file with the Registrar, a return in the form annexed to these rules and furnishing the information contained therein as on the 31st day of March of that year.

***Rule 11** : Penalty : If a company or any other person contravenes any provision of these rules for which no punishment is provided in the Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five hundred rupees and where the contravention is continuing one, with a further fine which may extend to fifty rupees for every day after the first during which the contravention continues."*

10. The plain reading of Section 468 of the Code provides that except as otherwise provided elsewhere in the Code, no Court shall take cognizance of the category specified in sub-section (2) after the expiry of period of

limitation. Sub-section (2) of Section 468 of the Code speaks about the period of limitation and the sub-clause (a) prescribes six months as the period of limitation if the offence is punishable with fine only. So the provisions of Section 468 of the Code would apply and the complaint could have been filed within a period of six months from the date of the offence. It is not possible for this Court to say that the provisions of Section 468 will have no application. A bare reading of the aforesaid Rule 10 of the Rules shows that if the Return in the Form annexed to the Rules is not filed with the Registrar of Companies before 30th June of every year, the offence for contravention of Rule 10 would be completed and the prosecution could be instituted for such offence. So on completion of each year, separate prosecution can be filed. In the present case, the prosecution could have been lodged on 01st July 1981 i.e. on the next day of 30th June 1981. In paragraph no.5 of the judgment under challenge, the learned Additional City Sessions Judge, Ahmedabad, has discussed the relevant legal position and has

logically reached to a conclusion that non-filing of the Return under the scheme of a particular Statute like Taxation laws, etc. would not apply to each case where the person under obligation fails in filing the Return. I would like to quote the relevant paragraph no.5 of the judgment which also refers to the provision of Section 58(B)(2) of the Reserve Bank of India Act, 1934, which is as under :

> *“5. As I read Rule 10 of the Rules, the offence for the contravention of that Rule does not seem to be a continuing offence. Mr.A.P. Desai, the learned Addl. Public Prosecutor, invited my attention to the decision in the case of UNITED SAVINGS AND FINANCE CO. PVT. LTD. & ANOTHER Vs. THE DEPUTY CHIEF OFFICER, RESERVE BANK OF INDIA, rendered by His Lordship Manojkumar Mukharjee J. of the Calcutta High Court, which has been reproduced in the 'Practical Guide to Company Deposits' by K.V. Shanbhogue and K. Ganesan, and submitted that just as an offence punishable under S.58 B (2) of*

the Reserve Bank of India Act is a continuing offence as held by the Calcutta High Court, the offence for the contravention of Rule 10 of the Rules punishable under Rule 11 of the Rules is also a continuing offence. I have gone through the Calcutta High Court decision and I think it does not help the prosecution in the case before me. In the Calcutta case the prosecution was for an offence under S. 58 B (2) of the Reserve Bank of India Act, 1934. That sub-section(2) reads as follows :

> *"58 B (1) xxx xxx*
>
> *(2) If any person fails to produce any book, account or other document or to furnish any statement, information or particulars which, under this Act or any order, regulation or direction made or given thereunder, it is his duty to produce or furnish or to answer any question put to him in pursuance of the provisions of*

this Act or of any order, regulation or direction made or given thereunder, he shall be punishable with fine which may extend to two thousand rupees in respect of each offence and if he persists in such failure or refusal, with further fine which may extend to one hundred rupees for every day, after the first during which the offence continues.””

11. The Court is of the view that the learned Revisional Court has even cared to compare the scheme of one of the Rules, being sub-section (2) of Section 58-B of the Reserve Bank of India Act, during the course of hearing vis-a-vis the Rule 10 of the Rules which was relevant and the language employed between two distinct provisions and it is observed that the wrong of violating Rule 10, which is made punishable under Rule 11 is not a continuing offence and, therefore, the scheme of Section 468 of the Code would attract. This finding sounds good logic and correct interpretation

of law. There is no perversity in interpreting the legal provisions or the facts. The scope of condonation of delay in a given case especially when the Court is dealing with the benevolent or welfare legislation would be altogether a different aspect. It is neither the say of the complainant nor it was submitted before the Revisional Court that the act of non-filing of Return under Rule 10 was violation of welfare legislation and, therefore, there was scope for the Court to condone the delay. It is rightly submitted that the present case is practically now covered by the judgment of the Kolkata High Court in the case of ***National Cotton Mills and others v. Assistant Registrar of Companies, W.B. and others***, ***reported in 1956 Company Cases 222***, where the Division Bench of the Kolkata High Court held that failure to file annual Return is not a continuing offence. The cognizance after expiry of period of limitation, is barred. On careful reading of the cited decision, I am of the view that the head-note prepared by the editors gives the

correct reflection of the ratio of the said decision and the observations made by the Division Bench. The said Head Note is the gist of the observations made by the Court in various paragraphs of the judgment which are at page nos.225, 226 and 227, and while recording finding, the Division Bench has referred to number of decisions including the judgment in the case of ***State of Bihar v. Devkaran Nanshi, AIR 1973 SC 908 and*** in the case of ***United Savings and Finance Company v. Deputy Chief Officer, R.B.I., reported in 1980 Cr.L.J. 607 (Cal)***, dealing with the scheme of Section 58B(2) of the R.B.I. Act. The relevant part of the said head-note would buttress the say of the learned counsel appearing for the respondents-accused :

> *"**Head Note** : Held, (i) that under s.200 of the Cr.P.C., 1973, the obligation on the part of a Magistrate taking cognisance of an offence on complaint to examine witnesses present is dispensed with when the complaint is made in writing by a public servant*

(viz., the Asst. Registrar of Companies) acting or purporting to act in the discharge of his official duties;

(ii) that in order to constitute a continuing offence, the offence must arise "out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with". Section 159 of the Companies Act, 1956, which requires every company to file with the Registrar the particulars specified in the section in the form of a return within sixty days from the date on which the annual general meeting is held, does not impose any liability which so continues. The offence on the breach thereof is complete with the failure to furnish the return in the manner or within the time stipulated. Such an offence is committed once and for all as and when one commits the

default. The provision does not contemplate that the obligation to submit the returns continues from day to day until the return is actually submitted nor does it provide that continuance of business without filing of such returns is prohibited so that non-fulfillment of a continuing obligation or continuing of business without filing of such returns becomes a continuing offence. When s.162 of the Act prescribed the penalty of fine "which may extend to fifty rupees for every day during which the default continues, it merely prescribed the measure of penalty- such a prescription being made with the object of enforcing strict compliance with the requirement of s.159 under the threat of enhanced penalty and getting relief from such penalty on enhancing scale by early submission of returns even after the default. That does not render the initial default a continuous one. It cannot be said that the offence is repeated or committed from day to day

after the initial default. It is not only where the offence is committed from day to day or repeated from day to day that it can be called a continuing offence. There being no express provision in s.162 in that behalf as there are in ss.234, 598, etc. of the Companies Act, 1956, it cannot be held that the offence under s.162 is a continuing offence.

(iii) That, since the offence was not a continuing one, the cognisance thereof after the expiry of the period of limitation provided in s.468 of the Cr.P.C., 1973 was not proper and was invalid."

12. In the case of ***Ramnuggar Cane and Sugar Com. Ltd. and others v. Assistant Registrar of Companies, reported in 1989 Cr.L.J. 2395***, the Division Bench of the Kolkata High Court has reiterated the said principle in the year 1989. It has been held by the Kolkata High Court that three elements must concur before the offence is held to be continuing one which

are as under :

> *"Three elements must concur before an offence can be held to be continuing one- (a) contravention or non-compliance with the relevant provisions of law, (b) provision for penalty for such contravention or non-compliance, and (c) liability for such punishment to continue until the provisions of law are complied with. It must be noted that it is not the liability for continued punishment in the shape of daily fine or otherwise that is the sine qua non for a continuing offence, but that the contravention of the liability for punishment that makes it so."*

13. Ultimately, the Kolkata High Court in the cited decision in the case of Ranuggar Cane and Sugar Com. Ltd. (supra) held that when there is nothing to indicate either in the provision of Rule 10 or Rule 11 or Section 58-A of the Companies Act, that the liability for the punishment for non-submission of Return

within the period prescribed would also arise and continue on or for each day even after the period prescribed, an offence for the contravention of Rule 10 cannot be treated as a "continuing contravention" within the meaning of Rule 11 of the Rules.

14. Karnataka High Court has also taken a similar view in the case of ***Shree Dharma Sudar Industries Pvt. Ltd. and others v. Registrar of Companies, Bangalore,*** placing reliance in the case of Deokaran Nenshi (supra), the Karnataka High Court has held that :

> "5. The learned counsel Shri Patil contended that the offence in each case was committed once for all by 30th of June of every year when the return was not filed. According to him, it is an offence committed once for all and it is not a continuing offence. He relied for that purpose on State of Bihar v. Deokaran Nenshi, AIR 1973 SC 908 :(1973 CrLJ 347). It was a case arising under the Mines Act, 1952.

Section 66 of the Mines Act 1952, provides that any person omitting inter alia to furnish any return, notice etc. in the prescribed form or manner or at or within the prescribed time required by or under the Act to be made or furnished shall be punishable with fine which may extend to Rs.1000/- Section 79, however, lays down that no court shall take cognizance of any offence under this Act unless a complaint whereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. The Explanation to the Section provides that if the offence in question is a continuing offence, the period of limitation shall be computed with reference to every point of time during which the said offence continues. The Supreme Court laid down in para.5 as :-

"A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of

continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

In the said case decided by the Supreme Court, the complaint was not filed within six months. Therefore the Supreme Court held that the complaint was time barred as the offence in question fell within the substantive part of S.79 and not under the Explanation attached to it. The Supreme Court has stated in Bhagirath Kanoria v. State of M.P., (AIR 1984 SC 1988, in para.15) as:-

“In Emperor v. Karsandas, section 390 (1) of the Bombay City Municipal Act, 1888 provided that no person shall newly establish in any premises any factory of a certain description without the previous permission of the Commissioner nor shall any person

work or allow to be worked any such factory without such permission. It was held by the High Court that establishing a new factory was an offence committed once and for all but working it without permission was a continuing offence."

In para 18 the Supreme Court has stated as :-

"The decision of this Court in State of Bihar v. Deokaran Nenshi to the effect that failure to furnish returns before the due date is not a continuing offence must be confined to cases of failure to furnish returns. It cannot be extended to cases like those before us in which, the contravention is not of a procedural or formal nature and goes against the very grain of the statute under consideration."

In the said Bhagirath Kanoria's Case (AIR 1984 SC 1688), the employer's contribution to the Provident Fund had not been paid and therefore the Supreme Court held, looking to the nature of the contravention, that the non-deposit of the contribution by the employer was a continuing offence and it was not an offence once and for all. The view taken by this Court in Provident Fund Inspector v. Dayananda (1979) 1 Kant LJ 324: (1980 Cri LJ 161) that non-payment of contribution and non-submission of return as required by paras.30(1) and 38(1) of the E.P.F. Scheme 1952 are offences committed completely on the expiry of the period of 15 days and 25 days contemplated by par.38(1) and are not continuing offences, runs contrary to the said Supreme Court decision reported in Bhagirath Kanoria v. State of M.P., AIR 1984 SC 1688. R.10 in this case requires that every company to which the rules apply shall on or before the 30th day of June, of every

year, file with the Registrar, a return in the form annexed to the Rules and furnish the information contained therein as on the 31st day of March of that year duly certified by the auditor of the Company. Therefore the non-filing of the return as laid down by R.10 on or before 30th June of every year, shall be deemed to have been committed once for all. Once the offence is committed under R.10, it cannot be said that the offence of non-filing of the return on or before 30th June of every year shall continue to be committed till the return is filed. The Rule expects that the return should be filed on or before 30th June of every year. If the return is not filed on or before 30th June of every year, the offence contemplated by R.10 is complete once for all and there is no question of continuity at all. The learned Senior Central Government Standing counsel Shri Shivappa tried to make a distinction between an omission to file a return and the commission of

an offence of not filing a return. The distinction is without much substance. What is made punishable by R.10 is the omission to file the return on or before 30th June of every year. If that omission is made an offence, it will be an offence committed once for all. R.10 thereafter does not cause any obligation on the company to file the return. Therefore for non-filing of the return is made punishable with fine under R.11."

15. Shri D.C. Sejpal, learned Central Government Standing Counsel and Ms.Hetvi Sancheti, learned counsel appearing for the respondents-accused, have jointly submitted that there is no direct judgment of this Court in reference to Rules 10 and 11 of the Rules. The judgments of the Kolkata High Court and Karnataka High Court can be said to have persuasive value. But here I would like to reproduce the relevant part of paragraph no.13 of the ***Common Oral Judgment dated 01st October 2007 passed by this Court (Coram : C.K. Buch, J) in the case***

of Savdas Rajsi Bhatu v. State of Gujarat, in Criminal Appeal No.126 of 1998 with Criminal Appeal No.511 of 1998, which is as under :

> *"13. The Court is conscious that the decisions of the said three different High Courts have persuasive value and this Court can take a different view than the other Courts. But I am of the view that there must be harmony in the law, especially the law which mainly has application through out the country like Essential Commodities Act, Drugs Control Act, Food Adulteration Act or law related to fertilizers, etc. We have federal structure but the harmonized legal finding would help the litigants, business personnel and various companies having their business places in different States of our country. Such harmony can also help in National integration. If the judgments of the other High Courts are not found*

apparently erroneous or infirm, they may be taken as guarding element as they have no binding element in stricto senso. In the present case, a person having factory was prosecuted by the Civil Supply Department alleging that he was holding stock of more than 220 litres of HSD. A person like the appellant is authorised to have 220 litres of HSD. So accepting the ratio of above referred decisions, I am inclined to say that in absence of report from the Chemical Analyser/ Public Analyst, the learned trial Judge ought not to have linked the appellant with the crime. The stock found with the appellant, without entering into merits as to whether the appellant was present or not, has not been proved to be the stock of HSD defined under Section 2(d) of the Order, 1990. As per the rule of best evidence, the prosecution ought to have led the

scientific evidence to prove this aspect that the stock was nothing but the HSD."

16. It is settled that the scope of Court exercising revisional jurisdiction is limited and if the Court is not satisfied that this is a fit case where the revisional jurisdiction is required to be exercised, otherwise it may result into miscarriage of justice or denial of justice on account of abundant illegalities or perversity in the finding or it may lead the prosecution or criminal proceedings to a major wrong, the same should not be exercised. So applying this ratio, I am inclined to dismiss both these Revision Applications.

17. So in view of aforesaid observations and discussion, both these Revision Applications are hereby dismissed. The judgment and order dated 22nd September 1983 passed by the learned Additional City Sessions Judge, Ahmedabad, in Criminal Revision Application No.230 of 198, is upheld. Rule, in both these Revision Applications, stands discharged.

18. Before parting with the judgment, it is necessary to observe that as such one Revision Application could have been filed but it appears that on account of technical reasons, two Revision Applications have been preferred, otherwise there was one prosecution.

(C.K. Buch, J)

Aakar